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15 GARY WHITE & ALEXANDER RIVERA

16 UNITED STATES DISTRICT COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA

19 GARY WHITE, an individual,
20 ALEXANDER RIVERA, an individual,
21 Plaintiffs,
22
23 v.

24 FEDEX CORPORATION, a Delaware
25 corporation, FEDEX EXPRESS, a
26 Delaware corporation, GUY
27 CAPRIELLO, an individual, PAUL
28 FERREY, an individual, DONALD
HEINZ, an individual, ROY JOHNSON,
an individual, CHRISTOPHER
MATTHEWS, an individual, GARY
MEEK, an individual, ROBERT
MONTEZ, an individual, ROBERT
MOTTER, an individual, DAVID
PERRY, an individual, MICHAEL
PIGORS, an individual, STEVEN
SEYMOUR, an individual, NORMAN
STITES, an individual, ANGELA
SUAZO, an individual, ROBIN
VANGALDER, an individual,
TIMOTHY WARTNER, an individual,
and DOES 1 through 100, inclusive,
Defendants.

Case No. C 04 0099 SI

**AMENDED COMPLAINT PURSUANT TO
NOVEMBER 12, 2003 COURT ORDER OF
HONORABLE SUSAN ILLSTON:**

1. **RACE DISCRIMINATION –
42 U.S.C. 1981;**
2. **RACIAL DISCRIMINATION –
DISPARATE TREATMENT -
FEHA**
3. **RACIAL DISCRIMINATION –
DISPARATE IMPACT –
FEHA**
4. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
5. **RETALIATION;**
6. **RACIAL HARASSMENT;**
7. **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
8. **FRAUD;**
9. **QUANTUM MERUIT;**
10. **EQUAL PAY ACT VIOLATION;**

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AND

11. INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. This is an employment discrimination action based on race and brought by two individual plaintiffs who were employees of defendant FedEx Express in the Northern District of California. This action is related to the consolidated class action pending in this court identified as Derrick Satchell, et al. v. FedEx Corporation, Case Number 03-2659 SI; 03-2878 SI; and was authorized by order of this court dated November 12, 2003. The plaintiffs in this action were originally named in the related class actions (03-2659 SI or 03-2878 SI) before the amendment. Following the amendment to the complaint in the consolidated class action, they have opted to join their severed individual claims in the amended complaint herein.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 42 U.S.C. § 1981. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over plaintiffs' state law claims, including those alleged under the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12940, *et seq.*

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) & (c). Both Plaintiffs' claims arose in California, and the acts complained of herein occurred in this District and gave rise to the claims alleged. Defendant operates over 100 facilities in California and employs thousands of workers in the State of California. Defendant operates at least 10 facilities in the Northern District of California.

Plaintiffs Alexander Rivera (hereinafter "RIVERA"), Gary White (hereinafter "WHITE"), and DOES 1 through 100, inclusive, allege as follows:

THE PARTIES

4. Plaintiff RIVERA is an Asian Pacific Islander male formerly employed by defendant FEDEX as a Courier at the Sunnyvale Facility. Plaintiff RIVERA was employed by FEDEX from approximately June 1997 to August 2001, at which time defendants wrongfully terminated his employment.

5. Plaintiff WHITE is an African American male formerly employed by defendant FEDEX as a part-time Handler at the Sunnyvale Facility. Plaintiff WHITE was employed by FEDEX from approximately November 1994 to March 2001, at which time defendants wrongfully terminated his employment.

6. Plaintiffs were, non-Caucasian FEDEX employees, who have suffered from patterns and practices of racial discrimination and other wrongful acts by defendants, which patterns and practices of racial discrimination and other wrongful acts are ongoing and continuing to and including the present. Plaintiffs are both similarly situated against the same defendants such that the interests of judicial economy are served by the assertion of plaintiffs' respective claims in a single action.

7. Plaintiffs are informed and believe, and based thereon allege, that Defendant FEDEX CORP is, and at all times mentioned herein was, a corporation duly organized and existing under the laws of the State of Delaware with places of business, among other places, in the Northern District of California. Plaintiffs are informed and believe that defendant FEDEX CORP controls, both directly and indirectly, the policies, decisions and other relevant acts of defendant FEDEX to the extent that the patterns and practices of racial discrimination and other wrongful acts alleged herein, which have been, and continue to be, perpetrated by defendant FEDEX against plaintiffs and other African American employees are, in fact, in whole or in part, the responsibility of FEDEX CORP. FEDEX CORP does business in the San Francisco Bay Area as "FEDEX Express," "FEDEX Ground," "FEDEX Freight," "FEDEX Custom Critical," "FEDEX Services" and "FEDEX Trade Networks".

8. Plaintiffs are informed and believe, and based thereon allege, that Defendant FEDEX is, and at all times mentioned herein was, a corporation duly organized and existing

1 under the laws of the State of Delaware, operating facilities, among other places, in the Northern
2 District of California.

3 9. Plaintiffs are informed and believe, and based thereon allege, that defendant
4 CAPRIELLO is a Caucasian male, currently employed as a Senior Manager for Heavyweight
5 operations at the Edes Facility, and was formerly the Senior Manager at the San Leandro Facility
6 from approximately October 1999 to October 2000. Defendant CAPRIELLO has been promoted,
7 and his wrongful actions against FEDEX's minority employees have been directly supported, by
8 a managerial chain of command including defendants PERRY, VANGALDER and PIGORS.

9 10. Plaintiffs are informed and believe, and based thereon allege, that defendant
10 FERREY is a Caucasian male, employed by FEDEX as the Senior Manager responsible for PM
11 Sort Operations at the Oakland Hub since approximately October 2000. Defendant FERREY has
12 been promoted, and his wrongful actions against FEDEX's minority employees have been
13 directly supported, by a managerial chain of command including defendants PERRY and
14 PIGORS.

15 11. Plaintiffs are informed and believe, and based thereon allege, that defendant
16 HEINZ is a Caucasian male, employed by FEDEX as the District Manager for the Coastal
17 District since approximately October 2000. Defendant HEINZ has been promoted, and his
18 wrongful actions against FEDEX's minority employees have been directly supported, by a
19 managerial chain of command including defendants PERRY, WARTNER and PIGORS.

20 12. Plaintiffs are informed and believe, and based thereon allege, that defendant
21 JOHNSON is a Caucasian male, employed by FEDEX as an Operations Manager at the
22 Sunnyvale Facility from at least 1998. Defendant JOHNSON has been promoted, and his
23 wrongful actions against FEDEX's minority employees have been directly supported, by a
24 managerial chain of command including defendants MOTTER, WARTNER, SEYMOUR and
25 PIGORS.

26 13. Plaintiffs are informed and believe, and based thereon allege, that defendant
27 MATTHEWS is a Caucasian male, employed by FEDEX as an Operations Manager of a FEDEX
28 Facility in San Diego County, and previously employed as the Senior Station Manager at the

1 Santa Clara Facility until approximately December 2001. Defendant MATTHEWS has been
2 promoted, and his wrongful actions against FEDEX's minority employees have been directly
3 supported, by a managerial chain of command including defendants WARTNER, SEYMOUR
4 and PIGORS.

5 14. Plaintiffs are informed and believe, and based thereon allege, that defendant
6 MEEKS is a Caucasian male, employed by FEDEX as an Operations Manager at the Sunnyvale
7 Facility since approximately September 2000. Defendant MEEKS has been promoted, and his
8 wrongful actions against FEDEX's minority employees have been directly supported, by a
9 managerial chain of command including defendants MOTTER, WARTNER, SEYMOUR and
10 PIGORS.

11 15. Plaintiffs are informed and believe, and based thereon allege, that defendant
12 MONTEZ is a Caucasian male, employed by FEDEX as the Senior Manager at the San Leandro
13 Facility from approximately October 2000 to 2002. Defendant MONTEZ has been promoted,
14 and his wrongful actions against FEDEX's minority employees of have been directly supported,
15 by a managerial chain of command including defendants VANGALDER and PIGORS.

16 16. Plaintiffs are informed and believe, and based thereon allege, that defendant
17 MOTTER is a Caucasian male, employed by FEDEX as the Senior Station Manager at the
18 Sunnyvale Facility since approximately January 2000, as acting Senior Station Manager for the
19 Santa Clara Facility in April 2002, and formerly as an Operations Manager at the Sunnyvale
20 Station from November 1994 until January 2000. Defendant MOTTER has been promoted, and
21 his wrongful actions against FEDEX's minority employees have been directly supported by a
22 managerial chain of command including defendants WARTNER, SEYMOUR and PIGORS.

23 17. Plaintiffs are informed and believe, and based thereon allege, that defendant
24 PERRY is a Caucasian male, employed by FEDEX as a Senior Manager in the Bay Area Metro
25 District, and previously, until January 2002, as a Managing Director out of the Oakland Hub
26 responsible for San Jose Heavyweight Operations, the San Jose Ramp and PM Sort operation in
27 Oakland. Defendant PERRY has been promoted, and his wrongful actions against FEDEX's
28 minority employees have been directly supported by defendant PIGORS.

18. Plaintiffs are informed and believe, and based thereon allege, that defendant PIGORS is a Caucasian male, employed by FEDEX as the Vice President of Operations for FEDEX's Air Ground Freight Services division for the Western Region since approximately March 2000, and previously as Vice President of Operations for FEDEX's Domestic Ground Operations for the Western Region. Defendant PIGORS has promoted and supported the wrongful actions against FEDEX's minority employees that have been taken by managers under his immediate direction, including those actions taken by defendants CAPRIELLO, HEINZ, FERREY, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, SEYMOUR, STITES, SUAZO, VAN GALDER and WARTNER.

19. Plaintiffs are informed and believe, and based thereon allege, that defendant SEYMOUR is a Caucasian male, employed by FEDEX as District Manager for the Bay Area Metro District since mid-2000, and previously as the Senior Station Manager at the Sunnyvale Facility. Defendant SEYMOUR has been promoted, and his wrongful actions against FEDEX's minority employees have been directly supported by a managerial chain of command including defendants WARTNER and PIGORS.

20. Plaintiffs are informed and believe, and based thereon allege, that defendant STITES is a Caucasian male, employed by FEDEX as an Operations Manager at the Oakland Hub since approximately June 1997. Defendant STITES has been promoted, and his wrongful actions against FEDEX's minority employees have been directly supported by a managerial chain of command including defendants PERRY, VAN GALDER and PIGORS.

21. Plaintiffs are informed and believe, and based thereon allege, that defendant SUAZO is a Caucasian female, employed by FEDEX as the Senior Station Manager at the Santa Clara Facility since approximately April 2002. Defendant SAUZO has been promoted, and her wrongful actions against FEDEX's minority employees have been directly supported by a managerial chain of command including defendants WARTNER, SEYMOUR and PIGORS.

22. Plaintiffs are informed and believe, and based thereon allege, that defendant VANGALDER is a Caucasian male, employed by FEDEX as Managing Director responsible for AM Sort and Day Sort Operations, as well as Ramp Transit Drivers in the Bay Area Metro

1 District. Defendant VANGALDER works out of the Oakland Hub. Defendant VANGALDER
2 has been promoted, and his wrongful actions against FEDEX's minority employees have been
3 directly supported by a managerial chain of command including defendants PERRY and
4 PIGORS.

5 23. Plaintiffs are informed and believe, and based thereon allege, that defendant
6 WARTNER is a Caucasian male, employed by FEDEX as District Manager for the Palm Desert
7 District since mid-2000, and formerly as the District Manager for the Bay Area Metro District
8 and as the Station Manager at the Sunnyvale Facility. Defendant WARTNER has been promoted,
9 and his wrongful actions against FEDEX's minority employees have been directly supported
10 defendant PIGORS.

11 24. Plaintiffs are ignorant of the true names and capacities of defendants, whether
12 individual, corporate, associate or otherwise, sued herein as DOES 1 through 100, inclusive, and
13 plaintiffs therefore sue such defendants by such fictitious names. Plaintiffs are informed and
14 believe, and based thereon allege, that each of these fictitiously named defendants is responsible
15 in some manner for the unlawful acts, omissions, occurrences, events and happenings alleged
16 herein and that plaintiffs' injuries as alleged herein were proximately caused by such
17 aforementioned defendants. When plaintiffs ascertain the true names and capacities of Doe
18 Defendants 1 through 100, plaintiffs will seek leave of Court to amend the Complaint to set forth
19 the true names and capacities of such defendants.

20 25. Plaintiffs are informed and believe, and based thereon allege, that at all times
21 mentioned herein, each of the defendants was and is the agent, employee and servant of each
22 other defendant, and committed the occurrences, unlawful acts and omissions complained of
23 herein while acting within the scope of such agency, employment and servitude. Moreover, each
24 of the defendants conspired and acted in concert with one another, and/or agreed to conspire and
25 act in concert with one another to commit the unlawful and unfair acts and/or omissions alleged
26 herein, and to violate the rights of plaintiffs. The acts and/or omissions of defendants, and each
27 of them, was or is in furtherance of said conspiracy and, thus, attributable to each of the other
28 defendants.

GENERAL ALLEGATIONS

26. Defendants FEDEX CORP and FEDEX are Delaware corporations operating express mail and package delivery and freight delivery services in the San Francisco Bay Area, as well as throughout the State of California, the country and the world. The parties to this action are, or have been, employed by defendants FEDEX CORP and FEDEX in their Domestic Ground Operations Division for the Western Region (“DGO”), or in their Air and Ground Freight Services Division for the Western Region (“AGFS”).

27. Until approximately February 2001, defendant PIGORS managed FEDEX's DGO Western Region as Vice President of Operations. Defendant PIGORS is currently Vice President of Operations for the Western Region of FEDEX's AGFS Division, and Tom O'Heara is Vice President of Operations for the DGO Division.

28. The Western Region of DGO is divided into several districts headed by District Managers. The districts in California include, Bay Area Metro, Coastal (including Bakersfield), East Bay (including Oakland and Hawaii), Golden State (including Sacramento), Harbor (including Los Angeles), Palm Desert (including San Diego), and Southern California (including Orange County) Districts.

29. In the DGO Division, the Vice President of Operations, the District Managers and Station Managers form the senior management ranks for defendants FEDEX CORP and FEDEX in a region. The various operations managers at each facility form the lower management ranks.

30. Defendants have limited the senior management ranks in the Western Region, as well as the lower management ranks primarily to Caucasians. Defendants employ only a sparse number of non-Caucasians in its management ranks. Plaintiffs are informed and believe, and based thereon allege, that defendants FEDEX CORP and FEDEX have never employed an African American or non-Caucasian as a Vice President of Operations in any Region.

31. In the Bay Area Metro District, defendants FEDEX CORP and FEDEX currently employ a Caucasian District Manager, nine (9) Caucasian Station Managers and a single African American Station Manager. In the Coastal District, defendants FEDEX CORP and FEDEX currently employ a Caucasian District Manager, eleven (11) Caucasian Station Managers and two

1 (2) minority Station Managers. In the East Bay District, defendants FEDEX CORP and FEDEX
2 currently employ a Caucasian District Manager, nine (9) Caucasian Station Managers and a
3 Hawaiian Station Manager. In the Golden State District, defendants FEDEX CORP and FEDEX
4 currently employ an African American District Manager and approximately 13 Caucasian Station
5 Managers. In the Harbor District, defendants FEDEX CORP and FEDEX currently employ a
6 Caucasian District Manager, six (6) Caucasian Station Managers and one (1) African American
7 Station Manager. In the Palm Desert District, defendants FEDEX CORP and FEDEX currently
8 employ a Caucasian District Manager, and approximately ten (10) Caucasian Station Managers.
9 Finally, in the Southern California District, defendants FEDEX CORP and FEDEX currently
10 employ a Caucasian District Manager, and approximately 12 Caucasian Station Managers. In
11 addition to the facts alleged below, such employment figures and practices demonstrate patterns
12 and employment practices that are racially discriminatory.

13 32. Defendants have also limited the management opportunities for minority
14 employees in lower management positions at, among other facilities, its Santa Clara and
15 Sunnyvale Facilities where a majority of the plaintiffs working in the DGO Division are
16 employed. Out of the seven (7) management positions at the Santa Clara Facility, non-
17 Caucasians occupy a total of two; and no non-Caucasian holds a senior management position at
18 this facility. Similarly, out of the seven (7) management positions at the Sunnyvale Facility, none
19 are held by non-Caucasians; and only Caucasians have ever held the senior management position
20 at this facility. In addition to the facts alleged below, such employment figures and practices
21 demonstrate patterns and employment practices that are racially discriminatory.

22 33. Significantly, only one percent (if that) of all defendants' management positions in
23 the Bay Area, whether upper, middle or lower management, are filled by minorities. As a result
24 of the few minority managers in management positions in FEDEX's Bay Area Metro District, the
25 managerial ranks within the District are commonly known as the "Ole Boys Network" or the
26 "Country Club." In addition to the facts alleged below, such employment figures and practices
27 demonstrate patterns and employment practices that are racially discriminatory.

28 34. FED EX's racial composition in the Bay Area facilities is grossly disproportionate

1 than society in general. In addition to the facts alleged below, such employment figures and
2 practices demonstrate patterns and employment practices that are racially discriminatory.

3 35. More specifically, defendants employ approximately 100 people at the Santa Clara
4 Facility. Out of such 100 employees, approximately thirty (30) are non-Caucasian, or 30%.
5 Similarly, defendants employ approximately 108 people at the Sunnyvale Facility. Out of such
6 108 employees, approximately twenty (20) are non-Caucasian, or 18.5%. In addition to the facts
7 alleged below, such employment figures and practices demonstrate patterns and employment
8 practices that are racially discriminatory.

9 36. Defendants FEDEX CORP and FEDEX operate numerous warehouse distribution
10 centers in the districts comprising the broader Bay Area; among these are the Bakersfield Facility,
11 the Milpitas Facility, the Oakland Facility, the Santa Clara Facility, South San Francisco Facility
12 and the Sunnyvale Facility. In general, the distribution facility is comprised of a large warehouse
13 to which packages are delivered, sorted, stored for later delivery or pick-up, and shipped. The
14 warehouse operation revolves around a large "U"-shaped, conveyor belt, generally referred to as
15 the Line. A delivery vehicle, such as the typical FedEx truck involved in customer deliveries,
16 enters the warehouse and backs up to a loading dock along either side at the beginning of the
17 Line. In the warehouse, Handlers unload (or load in the converse event) the packages onto the
18 dock and place them on the Line. Couriers typically assist in the loading and unloading of their
19 respective trucks. As packages are placed on the Line, their tracking numbers are scanned to
20 input into the electronic tracking system that the packages have been received at the distribution
21 facility. (In cases where packages are being loaded onto a truck for further shipping or delivery,
22 the tracking numbers are scanned to indicate they are leaving the warehouse.) At approximately
23 the mid-point along the length of the Line, and well inside the warehouse, the Line splits in a "T."
24 At that "T," packages may be diverted down a conveyor belt forming the stem of the "T," or
25 continue along the original line. Packages diverted down the stem of the "T" are sorted into
26 buckets, according to destination, and prepared for customer delivery by the Facility's Couriers or
27 held for customer pickup. Packages that continue along the original Line are also sorted and
28 placed in buckets in preparation for arriving at an elevated shipping bay on the opposite side of

1 the warehouse, where they are stacked into enormous “cans,” which are room-sized plastic or
2 metal containers that are loaded into tractor trailer trucks for ground shipment or transport to an
3 airport.

4 37. The elevated section of the line is referred to as “Topside” and is easily the most
5 physically and mentally strenuous part of the facility operation. Packages and buckets coming to
6 the Topside area are typically much heavier. Further, the Line at Topside operates faster to meet
7 the greater time constraints. Packages and buckets must be sorted, scanned and stacked in the
8 cans quickly to meet the departure deadlines of the tractor-trailer trucks, which must depart
9 promptly in order to transport freight to waiting airplanes.

10 38. Defendants FEDEX CORP and FEDEX operate two shifts for facilities within the
11 DGO Division, an A.M. shift and a P.M. shift, during which packages arrive and depart the
12 warehouse. On average, approximately 7,000 to 13,000 packages may be handled and sorted on
13 the Line per hour during a shift at the Santa Clara and Sunnyvale Facilities! And, an individual
14 package may weigh anywhere from a few ounces to 75 pounds. Crates may weigh up to 200
15 pounds.

16 39. Defendants FEDEX CORP and FEDEX employ numerous Handlers to lift, sort,
17 scan and stack packages in buckets, cans and delivery vehicles. In addition, several of the
18 Handlers are designated as “Lead Handler” and are responsible for the coordination and efficient
19 operation of other Handlers in processing packages along a particular part of the Line. The
20 smooth efficient operation of the Line is critical to defendants FEDEX CORP and FEDEX’s
21 business and for warranties to customers that packages will reach their destination within
22 guaranteed timeframes. Because the Line is a single conveyor belt along which all Handlers
23 perform their duties, a bottleneck along any of the various points may create hardship in other
24 parts of the facility. The efficient operation of the Line requires that sufficient numbers of
25 Handlers be stationed at those points on the Line that are more labor intensive, whether due to the
26 size and weight of the packages, the number of the packages being processed, or because of
27 additional functions that must be performed (i.e. sorting, stacking in buckets or cans, etc.).

28 40. In addition to Handlers, defendants FEDEX CORP and FEDEX employ other

1 types of job classes at their DGO facilities. These include Couriers who operate the delivery
2 vehicles and deliver and pickup packages from customers; Shuttle Drivers who drive shuttles or
3 large tractor trucks to pick up significant numbers of packages from institutional customers and to
4 make trips to the airport and other distribution facilities; Customer Service Agents (“CSA”) who
5 interact with the public and handle customer pickups and complaints; Dispatchers who
6 communicate with Couriers; Operations Managers who supervise the various workgroups or job
7 classes in the Facility during a shift; and Station Managers who are responsible for the entire
8 operation of a Facility.

9 41. As part of their AGFS Division for the Western Region, defendants FEDEX
10 CORP and FEDEX have operations at, among other places, the Oakland Hub, the San Leandro
11 RTD Facility, and the San Francisco and San Jose Ramp facilities. At these facilities, defendants’
12 employees load and unload delivery packages for ground and air shipment throughout the country
13 and around the world. Defendants also have Heavyweight operations in the AGFS Division that
14 are responsible for transporting extremely large freight, which is not suitable for air transport,
15 over long distances.

16 42. As in their DGO Division, the Vice President of Operations, the District Managers
17 and the Senior Managers form the senior management ranks for defendants in a region. The
18 various operations managers at each facility form the lower management ranks. In its senior
19 management ranks in particular, defendants have limited the senior management ranks in the
20 Western Region, as well as the lower management ranks primarily to Caucasians. Defendants
21 have employed only a sparse number of non-Caucasians.

22 43. Plaintiffs are informed and believe, and based thereon allege, that defendants
23 FEDEX CORP and FEDEX have never employed an African American or other minority as a
24 Vice President of Operations in any Region or AGFS. The current Vice President of Operations
25 is defendant PIGORS who is stationed in Irvine, California.

26 44. Three Directors based out of the Oakland Hub and are responsible for defendants’
27 Bay Area operations. Defendant VANGALDER is one of the Directors. VANGALDER is
28 responsible for (i) the RTD Trucking operations in the Bay Area, which stretches from Santa

1 Cruz to Sacramento and is based out of the San Leandro Facility; (ii) all AM Sort operations
2 (3:00 a.m. to 7:00 a.m.) at the Oakland Hub, which include sorting and delivery of all inbound
3 packages; (iii) Day Sort operations (7:00 a.m. to 2:00 p.m.), which include local and 2-Day
4 deliveries; (iv) Weekend Sort operations; and (v) the Hawaii Ramp Facility.

5 45. A second Director at the Oakland Hub is responsible for (i) the West Coast
6 Overlay, which involves all packages destined anywhere in the Western Region; (ii) all PM Sort
7 operations, which include all priority packages bound for destinations outside the West Region;
8 and (iii) the International Sort for all international deliveries.

9 46. The third Director at the Oakland Hub is responsible for operations at all the
10 smaller Ramp Facilities. The smaller AFGS facilities include the Edes Facility (OAKRS),
11 Portland Ramp (PDXR), Reno Ramp (RNOR), Sacramento Ramp (SMFR), Sacramento
12 Heavyweight (SMFRT), San Francisco Ramp (SFOR), San Jose Ramp (SJCR), San Jose
13 Heavyweight (SJCRT), and the Seattle Ramp (SEAR).

14 47. At each facility other than the Oakland Hub, there is a Senior Manager. However,
15 at the Oakland Hub, there are typically a few senior managers for each shift. For example, there
16 are two Senior Managers for the AM Sort, two Senior Managers for the Day Sort, two Senior
17 Managers for the PM Sort, three Senior Managers for the West Coast Overlay Sort, one manager
18 for the Weekend Sort and one manager for the International Sort.

19 48. Each Senior Manager in the Western Region supervises approximately six to seven
20 Operations Managers.

21 49. At the AGFS facilities, defendants FEDEX CORP and FEDEX employ, among
22 other positions, Cargo Handlers, Ramp Agents, Equipment Operators, and Ramp Transit Drivers
23 in order to load and unload packages and heavy freight, to transfer the cargo to and from the
24 cargo airplanes to the onsite facility for sorting or storage, and to transfer the cargo to and from
25 the large freight vehicles or smaller shuttles that transport the packages to the various distribution
26 facilities in the area or to their ultimate destinations. In the event there are dangerous spills from
27 packages, Defendants FEDEX CORP and FEDEX employ Hazardous Materials Specialists to
28 contain and neutralize such occurrences to assure employee safety and that of the general public.

1 50. Of the eleven Senior Managers employed by defendants at the Oakland Hub only
2 four are non-Caucasian. In addition to the facts alleged below, such employment figures and
3 practices demonstrate patterns and employment practices that are racially discriminatory.

4 51. Similarly, defendants FEDEX CORP and FEDEX employ a disproportionately
5 low number of minority and female Senior Managers at AGFS' smaller Bay Area facilities. Of
6 the eight Senior Manager positions, minority managers hold two positions. Moreover, there are
7 only two female Senior Managers employed by the AGFS Division. In addition to the facts
8 alleged below, such employment figures and practices demonstrate patterns and employment
9 practices that are racially discriminatory.

10 52. FEDEX has a grossly disproportionate racial composition of society in general.
11 More strikingly, only one percent (if that) of defendants' management positions in the Bay Area,
12 whether upper, middle or lower management, are filled by non-Caucasians. In addition to the
13 facts alleged below, such employment figures and practices demonstrate patterns and
14 employment practices that are racially discriminatory.

15 53. Virtually all minority employees in both the DGO and AGFS Divisions of FEDEX
16 occupy entry level, hourly positions. The few non-Caucasian employees who are able to break
17 into the management ranks are usually promoted by other minority managers. However, these
18 minority managers are usually subjected to long-standing and exclusive alienating practices that
19 affectively minimize their influence and participation in collective management decisions, and
20 limit their opportunities for further advancement at FEDEX. Such practices, for example, include
21 exclusion of minority managers from "informal" email buddy lists that are used to communicate
22 relevant operating procedures, discuss managerial issues, and post corporate advancement
23 opportunities. Minority managers are also excluded from the important social activities, like
24 retreats and ski trips organized by senior managers, where important networking takes place and
25 relationships are developed. In addition to the facts alleged below, such employment figures and
26 practices demonstrate patterns and employment practices that are racially discriminatory.

27 54. Defendants FEDEX CORP and FEDEX have a long-standing, widespread and
28 deep-rooted discriminatory employment policy against hiring minority applicants in the Bay Area

1 if Caucasians are available. This practice is demonstrated by the fact that defendants' workplace
2 is grossly disproportionate to the racial composition of the San Francisco Bay Area in general.
3 Consistent with defendants' long-standing and deeply rooted discriminatory policies, defendants
4 will typically hire minority employees only for entry, low-level and part-time positions.
5 Moreover, they consistently fail and refuse to promote these minority employees.

6 55. Minority employees have, from time to time, referred other minority family
7 members, friends and/or colleagues to apply for jobs with defendants FEDEX CORP and FEDEX
8 in an effort to improve the racial composition of defendants' workforce. However, defendants
9 FEDEX CORP and FEDEX consistently fail and refuse to hire its employees' non-Caucasian
10 family members, friends and/or colleagues, while regularly hiring Caucasian applicants referred
11 to defendants by Caucasian employees. In addition to the facts alleged below, such
12 circumstances demonstrate patterns and employment practices that are racially discriminatory.

13 56. Defendants FEDEX CORP and FEDEX have further engaged in related
14 discriminatory practices to limit the employment opportunities of minorities at its facilities by
15 means of a dual-employment track. Under this dual-track employment scheme, defendants
16 FEDEX CORP and FEDEX employ individuals on either a permanent full-time basis or a part-
17 time basis for most entry-level and non-managerial jobs. For example, both full-time and part-
18 time employees fill Handler positions at a facility. However, the full-time positions are
19 necessarily more lucrative and provide employees with more opportunities for advancement in
20 the organization, job security and greater pay and benefits. By contrast, the part-time positions
21 are generally less desirable, having lower total wages, changing and inconstant work hours,
22 proportionately heavier responsibilities, and generally more oppressive work conditions. Further,
23 employees holding part-time positions are typically required to seek second and third jobs in
24 order to cover the costs of living; and the changing and inconstant work hours often make it
25 difficult for such employees to find suitable, long-term jobs for supplemental income.

26 57. Defendants FEDEX CORP and FEDEX systematically and prejudicially divert
27 qualified minority job applicants into part-time jobs, with lesser job security, compensation and
28 opportunity for advancement. On the other hand, defendants typically reserve the full-time,

1 higher wage positions for Caucasian applicants. For example, of the approximately 24 African
2 Americans employed at the Santa Clara and Sunnyvale Facilities, approximately 18 have been
3 tracked into the low-paying, unstable and oppressive part-time positions; that is to say, 75% of the
4 African Americans employed by defendants are in dead-end jobs. This figure demonstrates that
5 minority employees are grossly under-represented in the full-time jobs with greater security. In
6 addition to the facts alleged below, such circumstances demonstrate patterns and employment
7 practices that are racially discriminatory.

8 58. Defendants FEDEX CORP and FEDEX further use the dual-track system to mask
9 other discriminatory practices that have a disproportionate impact on minority employees. Part-
10 time employees are disproportionately impacted by adverse employment actions, such as lay-offs
11 or reduced hours; notwithstanding, that many part-time employees may have more seniority over
12 full-time employees. As previously mentioned, part-time employees have lesser opportunities for
13 advancement with defendants. By tracking minority applicants into part-time positions,
14 defendants have a convenient excuse to explain discriminatory practices that result in
15 disproportionate numbers of minorities being laid off or having their hours reduced in
16 economically hard times, or that prevent minority employees from receiving well-deserved
17 promotions. In addition to the facts alleged below, such circumstances demonstrate patterns and
18 employment practices that are racially discriminatory.

19 59. At its facilities, defendants FEDEX CORP and FEDEX have fraudulently
20 instituted the practice of designating "Lead" positions (e.g. Lead Handler) to obscure its practice
21 of limiting advancement and management opportunities to minority employees, and to justify its
22 practice of requiring minority employees to perform more work for no additional compensation or
23 job-level advancement. "Lead" Handlers, for example, are required to perform the exact same
24 duties as other Handlers in their area, in addition to being responsible for supervising, training
25 and taking measures to assure the proper and efficient functions of their work groups.

26 60. Defendants FEDEX CORP and FEDEX routinely hold minority Leads responsible
27 for performance deficiencies in their group, even though they do not have the authority to make
28 necessary adjustments to group assignments, obtain additional resources or take other measures to

1 address deficiencies they might identify. When changes are required, minority Leads must rely
2 on the discretion of management, who may or may not support them. Defendants FEDEX CORP
3 and FEDEX consistently deny requests for additional support from minority Leads. By contrast,
4 Caucasian Leads are granted broader discretion in managing their work groups and enjoy
5 management support when they request additional resources.

6 61. Defendants FEDEX CORP and FEDEX regularly reprimand and discipline
7 minority Leads for group deficiencies even if managers have previously refused to implement
8 corrective measures recommended by the minority Leads to address the issue. By contrast,
9 defendants FEDEX CORP and FEDEX rarely reprimand or discipline Caucasian Leads for
10 similar deficiencies in their work groups.

11 62. Despite significantly greater responsibility minority Leads receive the same
12 compensation as others in their work groups. Furthermore, for the minority Lead, the position is
13 not a stepping-stone to a promotion. Minority Leads are routinely passed over for promotions in
14 favor of Caucasian employees, including Caucasian candidates who have never held quasi-
15 management Lead positions. By contrast, Caucasian Leads are routinely given preference for
16 available promotions. In fact, if a Caucasian holds the Lead position in a work group for which
17 the operations manager position is open, the Caucasian Lead is often appointed manager without
18 the necessity of having to interview for the position.

19 63. In many instances, defendants FEDEX CORP and FEDEX disingenuously employ
20 the practice of appointing minority employees to Lead positions, in order to create the perception
21 of promoting minorities. In reality, for most minority Leads, the position is without meaningful
22 benefits, but is characterized by numerous liabilities. For the Caucasian Lead, the position is
23 treated more as an extension of management. In addition to the facts alleged below, such
24 circumstances demonstrate patterns and employment practices that are racially discriminatory.

25 64. As described in greater detail below, numerous Caucasian employees, who have
26 been hired subsequent to the hiring of plaintiffs at the Bay Area FEDEX Facilities, have been
27 promoted by defendants FEDEX CORP and FEDEX to full-time, higher paying and/or
28 management positions for which plaintiffs have applied. Time and again, plaintiffs often have

1 trained and assisted such subsequently-hired Caucasian employees, only to have defendants
2 FEDEX CORP and FEDEX subject plaintiffs to the indignity of having such subsequently-hired,
3 Caucasians promoted to positions over them. In many cases, plaintiffs have had continue their
4 training of the promoted Caucasians in their new management or leadership responsibilities. In
5 addition to the facts alleged below, such circumstances demonstrate patterns and employment
6 practices that are racially discriminatory.

7 65. As described in greater detail below, defendants have engaged in a widespread,
8 deep-rooted unfair employment practice of paying minority employees less than Caucasian
9 employees in similar positions at the same facility, even though the minority employees may have
10 comparable responsibilities, more seniority and/or more work experience than the Caucasian
11 employees. In addition to the facts alleged below, such circumstances demonstrate patterns and
12 employment practices that are racially discriminatory.

13 66. Defendants routinely engage in the fraudulent practice of altering time cards of
14 minority employees in order to reduce the number of hours worked and the amount of wages to
15 which they are entitled. Defendants also alter the time cards of minority employees in order to
16 deny them overtime, sick and vacation pay. Defendants do not subject Caucasian employees to
17 fraudulent time card practices that result in reduced wages and benefits.

18 67. As described in greater detail below, defendants FEDEX CORP and FEDEX have
19 engaged in a long-standing, widespread and discriminatory practice of applying differential
20 standards in determining whether to subject an employee to disciplinary action. Minority
21 employees are consistently reprimanded and disciplined for petty matters, and are disciplined for
22 infractions unsupported or contradicted by credible evidence. In many cases, Minority employees
23 are not even allowed to present their version of the facts prior to discipline; are disciplined before
24 an investigation is complete; or are prevented from utilizing the Guaranteed Fairness Treatment
25 Process (“GFT Process”) implemented by Defendants FEDEX CORP and FEDEX to allow
26 employees to appeal disciplinary and/or employment actions. Not surprisingly, Caucasian
27 employees are not reprimanded or disciplined for similar, if not identical, trivial matters, or for
28 infractions which are not supported by credible evidence. And, there are no incidents where a

1 Caucasian employee has requested to appeal a decision through GFT Process and has been denied
2 the opportunity. In addition to the facts alleged below, such circumstances demonstrate patterns
3 and employment practices that are racially discriminatory.

4 68. Defendants FEDEX CORP and FEDEX in general, and the INDIVIDUAL
5 DEFENDANTS in particular, have used the racially discriminatory practice of liberally and
6 frivolously reprimanding or disciplining minority employees, for acts and in instances where
7 defendants have not disciplined Caucasian employees, in order to provide pretext for their
8 wrongful, race-based termination of minorities.

9 69. Defendants FEDEX CORP and FEDEX inform employees that their employment
10 with the Company will be terminated if an employee receives three (3) warning letters in a 12-
11 month period. In fact, company policy allows employment to be terminated if an employee
12 receives three of any written form of discipline in a 12-month period. Thus, in addition to a
13 written warning letter, a documented counseling, or "OLCC," which is a verbal warning
14 accompanied by a notation in a company database that both an employee and manager
15 acknowledge in writing, may count towards employment termination.

16 70. Defendants routinely terminate minority employees who receive three forms of
17 discipline within a 12-month period. By contrast, defendants do not automatically terminate
18 Caucasian employees who are disciplined three times in a 12-month period. In cases, where
19 Caucasians have received three disciplinary actions in a 12-month period, defendants have
20 allowed the Caucasian employee to continue his employment, have transferred the employee, or
21 have demoted the employee.

22 71. Defendants have engaged in the fraudulent and misleading practice of informing
23 minority employees to disregard or forego the GFT Process for unfair OLCCs, assuring them that
24 a GFT appeal is not worth the trouble. Defendants fraudulently inform minority candidates that
25 OLCCs cannot be counted towards termination decisions. Meanwhile, defendants discipline
26 minority employees for minor matters and terminate them on that basis. Upon discovering later
27 that even the minor forms of discipline may be counted in termination decisions, many minority
28 employees are left without recourse to challenge earlier, unfair disciplinary actions that

1 contributed to the total of three, and which they might have appealed using the GFT Process had
2 they been correctly informed. Under the GFT guidelines, employees have only five days to
3 initiate an appeal. In addition to the facts alleged below, such circumstances demonstrate patterns
4 and employment practices that are racially discriminatory.

5 72. Defendants FEDEX CORP and FEDEX have further created a racially hostile
6 workplace environment designed and intended to intimidate plaintiffs and other minority
7 employees from complaining about the racially discriminatory practices at defendants FEDEX
8 CORP and FEDEX's facilities for fear of losing their jobs or further increasing the oppressive and
9 hostile work conditions. On those occasions when plaintiffs and other minorities have
10 complained about such racially-discriminatory practices, defendants FEDEX CORP and FEDEX
11 have retaliated against such complaining individuals, through such acts as termination,
12 suspension, formal disciplinary actions, and more adversely affecting such complaining
13 individual's working conditions. In addition to the facts alleged below, such circumstances
14 demonstrate patterns and employment practices that are racially discriminatory.

15 73. Defendants CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK,
16 MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and
17 WARTNER, (collectively the "INDIVIDUAL DEFENDANTS"), directly and indirectly,
18 individually and in concert, have further engaged in a relentless pattern and practice of intentional
19 harassment and persecution of plaintiffs and other minority employees with the intent to mentally
20 intimidate plaintiffs and other minority employees; place them in conditions of grave physical
21 danger; demean them; undermine their standing and authority with their colleagues; and generally
22 force them to terminate their employments with FEDEX. Such INDIVIDUAL DEFENDANTS
23 have undertaken such harassing actions with malice, forethought and careful planning.

24 74. The INDIVIDUAL DEFENDANTS have used their management positions with
25 defendants FEDEX CORP and FEDEX to suppress formal complaints by plaintiffs and other
26 minority employees. INDIVIDUAL DEFENDANTS in higher management positions have
27 affirmatively assisted or overlooked the harassing behavior of INDIVIDUAL DEFENDANTS
28 under their supervision and control, and have failed to alleviate the incessant harassment and

1 persecution of plaintiffs and other minority employees. In addition to the facts alleged below,
2 such circumstances demonstrate patterns and employment practices that are racially
3 discriminatory.

4 75. Further, defendants FEDEX CORP and FEDEX have, actively and tacitly,
5 condoned the harassing behaviors of the INDIVIDUAL DEFENDANTS by failing to properly
6 investigate formal complaints regarding harassment by the INDIVIDUAL DEFENDANTS; and
7 by promoting the INDIVIDUAL DEFENDANTS or transferring them among their various
8 locations despite repeated complaints (and in some cases, previous discrimination lawsuits) made
9 by plaintiffs and other minority employees. In addition to the facts alleged below, such
10 circumstances demonstrate patterns and employment practices that are racially discriminatory.

11 76. As a proximate result of the above-described long-standing, widespread and deep-
12 rooted racially-discriminatory employment practices and other wrongful acts alleged herein,
13 plaintiffs, and each of them, have suffered loss of income, loss of advancement and promotion,
14 loss of career opportunity, loss of intangible job benefits, all in amounts to be proven at trial. As
15 further proximate result of the above-described racially discriminatory employment practices and
16 other wrongful acts alleged herein, plaintiffs, and each of them, have experienced pain, suffering,
17 severe emotional and mental distress, shame, humiliation, embarrassment, and related physical
18 ailments all in amounts to be proven at trial.

19 77. The long-standing, wide-spread and deep-rooted racially-discriminatory
20 employment practices and other wrongful acts alleged herein are oppressive, malicious,
21 fraudulent and in conscious disregard of plaintiffs' human and civil rights such that punitive
22 damages are warranted in order to punish and make an example of all defendants.

23 78. Plaintiffs, and each of them, have experienced such racially-discriminatory
24 employment practices and other racially-discriminatory actions by defendants including, without
25 limitation, practices and actions in the following respects:

26 **ALEXANDER RIVERA**

27 79. Defendant FEDEX hired plaintiff RIVERA in approximately June 1997 as a
28 Courier at the Sunnyvale Facility. Defendants engaged in widespread, deep-rooted racially

1 discriminatory employment practices of assigning plaintiff and other non-Caucasian Couriers the
2 most difficult delivery routes in terms of both distance and number of packages to be delivered.
3 Plaintiff RIVERA's route required plaintiff to pick up nearly twice as much freight as the average
4 Courier with a heavy route. The average Courier with a heavy freight route was required to pick
5 up approximately 250 packages; whereas, plaintiff was required to pick up approximately 400 to
6 600 packages on an average day. Moreover, despite repeated requests by plaintiff, defendants
7 refused to provide plaintiff with necessary assistance on occasions when plaintiff's deliveries
8 were particularly heavy. By contrast, defendants routinely provided delivery assistance to
9 Caucasian Couriers when they requested assistance even though the Caucasian Couriers were
10 assigned shorter and less demanding delivery routes.

11 80. In addition, defendants, and particularly defendant MOTTER, harassed plaintiff by
12 setting work objectives that were impracticable, if not impossible, for plaintiff to meet.
13 Defendant MOTTER insisted that plaintiff perform his greater duties and return to the station
14 within the same time frame as Caucasian Couriers with easier routes. Defendants imposed such
15 unrealistic demands on plaintiff to harass and set plaintiff up for disciplinary action and failure.
16 Defendants ignored plaintiff's complaints that he could not complete his route in the specified
17 timeframe without leaving packages scheduled for pick up. When plaintiff failed to complete his
18 route within the unreasonable time frame he was reprimanded and disciplined by defendants.

19 81. Defendants further harassed plaintiff by constantly scrutinizing and criticizing his
20 job performance. Defendants did not scrutinize Caucasian Couriers' performance. If Caucasian
21 Couriers returned to the station late from their routes, they were not verbally reprimanded or
22 criticized in front of their peers like defendants reprimanded or criticized plaintiff. Furthermore,
23 plaintiff was criticized if he inadvertently made a mistake in preparing an air bill. Caucasian
24 Couriers were not similarly criticized or disciplined for inadvertent air bill mistakes.

25 82. Defendants have engaged in a widespread, deep-rooted racially discriminatory
26 employment practice of paying plaintiff RIVERA and other minority employees less than they
27 pay Caucasian employees even though plaintiff and other minority employees have comparable
28 responsibilities and more seniority and work experience.

1 83. Defendants have further engaged in the racially discriminatory practice of altering
2 plaintiff's time cards so as to short plaintiff for hours he has actually worked. Plaintiff has
3 repeatedly complained of these practices to defendants, including defendant's human resources
4 department. Defendants have failed to pay plaintiff for hours he has been shorted.

5 84. Defendants also pursued their deliberate, malicious, widely used scheme of
6 consistently issuing formal disciplinary actions against plaintiff RIVERA and other non-
7 Caucasian employees for petty or trivial matters, or matters unsupported or contradicted by
8 credible evidence in order to reach the three-in-a-year disciplinary actions required for an
9 automatic termination.

10 85. In late 2000, plaintiff was given a written disciplinary letter for failure to bring his
11 printer in for inspection for a whole week. This disciplinary action was based on a procedure
12 implemented by MOTTER that required Couriers to turn in their equipment for regular
13 inspection. During the week in question, plaintiff had been on vacation the entire week and had
14 left his printer in his truck. Defendants insisted on disciplining plaintiff even though he was on
15 vacation and had not been using the printer, and despite the fact that he turned the printer in for
16 inspection immediately upon his return from vacation. By contrast, defendants have never
17 written up a Caucasian Courier for leaving their equipment in their trucks under similar
18 circumstances.

19 86. Defendant MOTTER also gave plaintiff RIVERA a written letter for driving a
20 FEDEX truck with an expired commercial license. Prior to the disciplinary action, two managers,
21 Corey Waiters and Kenny Roberts, informed plaintiff that he did not need to have a commercial
22 license to drive the type of Grumman truck to which he was assigned. Though plaintiff intended
23 to renew his commercial license, he continued to drive the truck after the expiration.
24 Notwithstanding the representations by the two managers, MOTTER insisted on giving plaintiff a
25 written warning letter. By contrast, Caucasian Couriers have been accommodated, and not
26 disciplined, during periods between the expiration and renewal of their commercial licenses. In
27 fact, defendants refused to discipline one Caucasian Courier, Jay Sermino, even though he drove
28 his FEDEX truck for months after his commercial license had expired. In addition to giving

1 plaintiff a written warning, MOTTER also threatened to suspend plaintiff for allowing the license
2 to expire in the first instance.

3 87. In August 2001, plaintiff was wrongfully terminated when MOTTER instructed
4 that plaintiff be given his third disciplinary letter in a 12-month period. Plaintiff was written up
5 for being late to work. Prior to the written letter, plaintiff had not been disciplined for tardiness.
6 Significantly, no Caucasian Courier had been given any discipline for tardiness during the period
7 that plaintiff was employed by defendants.

8 **GARY WHITE**

9 88. Plaintiff WHITE was hired by defendant FEDEX on or about November 30, 1994
10 as a casual part-time Handler at the Sunnyvale Facility. Despite repeated requests for an
11 available permanent position, defendants hired and/or converted many non-African American
12 individuals, who applied for positions with defendants after plaintiff WHITE, to permanent
13 positions before defendants gave plaintiff a permanent position.

14 89. From approximately mid-1996 until sometime in 1999, defendants assigned
15 plaintiff the additional duties of shuttle driver. Plaintiff was required to "pre-trip" his shuttle,
16 load and unload the shuttle, and drive the shuttle to and from the San Jose airport and to local
17 corporate customers such as Cisco Systems and Bay Networks in Sunnyvale. Plaintiff spent a
18 significant part of each day performing these shuttle driving duties.

19 90. Despite working primarily as a Shuttle Driver, defendants repeatedly passed over
20 plaintiff WHITE, and other African American employees, for promotion to the position of Shuttle
21 Driver in favor of Caucasian employees and new hire applicants with less experience and
22 seniority. In addition, defendants discriminated against plaintiff by failing to comply with their
23 own personnel guidelines that require promotion to Shuttle Driver if more than 50% of an
24 employee's time is spent driving. Plaintiff spent more than 50% of his day performing shuttle
25 related duties. And, defendants refused to pay plaintiff the same compensation for driving the
26 shuttle that defendants gave to Caucasian workers who drove shuttles.

27 91. Plaintiff WHITE complained to defendants that they were treating him and other
28 Caucasian employees who drove shuttles in a racially discriminatory manner. When defendants

1 still refused to increase wages for plaintiffs and other African Americans drives, plaintiff initiated
2 a GFT Process in order to get compensation for his shuttle driving duties.

3 92. Despite repeated requests by plaintiff for defendants to end his driving duties if he
4 were not paid more, defendant MOTTER refused to relieve plaintiff of shuttle driving
5 responsibilities. Further, defendants retaliated against plaintiff for his discrimination complaint
6 and for initiating the GFT Process on the shuttle driver pay matter. Defendants engaged in a wide
7 range of intimidation and coercive tactics to assure that plaintiff continued to drive the shuttle.

8 93. Defendants only relieved plaintiff of his shuttle driving duties after receiving a
9 physician's note restricting plaintiff from driving shuttles until further notice. Plaintiff had begun
10 consulting a doctor as a result of experiencing shame, humiliation, emotional distress,
11 embarrassment, and related physical ailments from defendants' racially discriminatory
12 employment practices, retaliation and harassment.

13 94. After the doctor's restriction, defendant MOTTER and other defendants increased
14 their racially motivated retaliatory and harassment tactics. Among other things, defendants
15 severely and unfairly lowered plaintiff's performance reviews. Previously, plaintiff's managers
16 had consistently given him 6s on the 7.0 review scale and praised plaintiff's work practices both
17 verbally and in writing. Defendant MOTTER limited plaintiff to scores well below 6.0 and
18 openly criticized managers, in plaintiff's presence, for commenting favorably on plaintiff's work.
19 By illustration, on one occasion when plaintiff's direct supervisor was prepared to give plaintiff a
20 7.0 for attendance, defendant MOTTER preventing him from doing so. Defendants evaluated
21 plaintiff's attendance performance as 6.0, even though plaintiff had never, ever, missed or even
22 been late for a day of work during his entire employment by FEDEX.

23 95. In approximately November 2000, as further retaliation against plaintiff WHITE,
24 Defendant MOTTER directed defendant MEEK, who had become plaintiff's Operations
25 Manager, to reduce plaintiff's 17½ weekly work schedule by 7 to 10 hours, despite FEDEX's
26 guarantee to part-time employees of at least 17½ hours unless they waive their rights to the entire
27 minimum. Defendants reduced plaintiff's hours and refused to pay him for the minimum in spite
28 of plaintiff's refusal to waive such rights. On the other hand, defendants did not reduce the

1 guaranteed minimum of hours for Caucasian employees. They did so with plaintiff to force him
2 to quit.

3 96. Defendants also engaged in the racially discriminatory practice of altering
4 plaintiff's time cards so as to short plaintiff for hours she has actually worked. Plaintiff has
5 repeatedly complained of these practices to defendants, including defendant's human resources
6 department. Defendants have failed to pay plaintiff for hours she has been shorted.

7 97. Defendants also harassed plaintiff by repeatedly calling him into the office to
8 complain of sorting errors in placing freight on trucks in instances where others also placed
9 packages in the respective trucks. Plaintiff is informed and believe, and thereon alleges, that
10 defendant MEEK, himself, placed wrong packages in trucks that plaintiff was working on to
11 create grounds for additional discipline. Due to the thousands of packages that passed through
12 the Sunnyvale Facility daily, the insufficient staffing and the rate at which packages come off the
13 conveyor belt, the incidences of mis-sorting freight were common. Defendants rarely complained
14 of Caucasian employees for sorting mistakes.

15 98. Defendants reluctantly gave plaintiff time off for doctor's visits; whereas,
16 Caucasian employees had no difficulty getting time off. In addition, plaintiff was required to
17 maintain records of management's authorizations of his time off, since defendants, upon
18 plaintiff's return, would often question whether his time off had been legitimate. Defendants
19 routinely denied that they had given time off, and would have disciplined him had he not kept
20 their written authorizations.

21 99. To further harass and oppress plaintiff WHITE, defendants assigned him to an
22 unnecessary, newly created position at the busiest section near the "T" of the Line, and required
23 plaintiff to work the station alone. Employees referred to the station as the "wrongful exodus
24 station." Even though the station was among the most difficult in the Sunnyvale Facility,
25 defendants MEEK and MOTTER refused to let other Handlers voluntarily assist plaintiff. They
26 also laughed at plaintiff's repeated pleas for assistance. Defendants required plaintiff to perform
27 every task related to working the station, including lifting heavy packages from the line, scanning
28 them and jumping up into a truck and stacking the packages for delivery. Since the station was

1 located in one of the busiest parts of the Line, the packages came quickly off the line. Defendants
2 typically staff stations and cans comparable to plaintiff's new, "personal" station with at least
3 three Handlers. Defendants did not assign Caucasian Handlers to this station, nor did they require
4 Caucasians to work alone at any other station or can in the Facility. In addition, defendants
5 promptly responded to requests for additional assistance coming from Caucasian employees;
6 whereas, they denied plaintiff any help at all. On occasion, defendant MEEK himself would
7 work the line to assist Caucasian employees. On those occasions that plaintiff requested his help
8 with particularly heavy boxes or when the Line was moving too quickly, defendant MEEK would
9 glare at him and tell him that he would never get any help.

10 100. On January 30, 2001, plaintiff received a verbal warning from defendants for
11 failure to scan packages at the "wrongful exodus station," The next day, January 31, 2001,
12 defendant MEEK gave plaintiff a documented counseling also for failing to scan packages. On
13 February 6, 2001, defendants gave plaintiff a warning letter, stating that he had failed to follow
14 management's instructions to scan packages on 2/1, 2/2 and 2/5. Finally, on February 9, 2001,
15 plaintiff was given another warning letter for failing to scan freight and suspended for four days.

16 101. Plaintiff did not fail to follow management's instructions with regard to scanning
17 packages at his station. Plaintiff did scan packages. However, as part of defendants' widespread,
18 deep-rooted, racially discriminatory practices with the intent to force plaintiff to quit or provide
19 grounds for termination, defendants artificially, needlessly, and maliciously created
20 circumstances wherein it was impossible for plaintiff to scan all the packages that needed to be
21 stacked. Plaintiff's failure to scan all the packages in the station was not the result of lack of
22 training or insubordination. Plaintiff was limited by constraints created by defendants.
23 Defendants forced plaintiff to work alone at a station that would otherwise have been worked by
24 at least two or three handlers. Defendants refused plaintiff assistance despite repeated requests by
25 plaintiff and voluntarily offers of help from plaintiff's colleagues. Further, plaintiff had to get
26 packages off the Line to avoid creating a bottleneck or hardship at stations further down the Line.
27 He also had to have packages stacked in a truck and ready for transport by the time the tractor-
28 trailer trucks were scheduled to leave. Caught between the rock and the hard place, plaintiff

1 scanned as many packages as he could.

2 102. No Caucasian Handler was ever placed in conditions as near impossible as those of
3 plaintiff; however, defendants used the same “wrongful exodus can” to harass, demoralize and
4 create grounds of termination for other African American Handlers. Not surprisingly shortly after
5 plaintiffs WHITE was terminated, defendants discontinued use of the “wrongful exodus can.”

6 103. Plaintiff WHITE initiated a GFT Process appeal on his two documented
7 disciplinary actions relating to scanning. Defendants summarily denied the appeals.

8 104. Defendants succeeded in terminating plaintiff WHITE’s employment on March 9,
9 2001. Plaintiff was given a third warning letter in 12 months and terminated. Defendants issued
10 the final warning letter because plaintiff refused to stop using the section of his timecard,
11 intended for employees to record any comments they might have and entitled “Notes,” for making
12 complaints regarding defendants’ discriminatory behavior and harassment. Defendants had
13 instructed plaintiff not to write on the timecard; however, defendants had refused to address any
14 of his repeated concerns of racial discrimination. Plaintiff wrote his comments as a last and
15 desperate effort to get defendants FEDEX CORP and FEDEX to take adequate measures to stop
16 defendants wide-spread, deep-rooted racially-discriminatory behavior. Significantly, defendants
17 have never disciplined Caucasian employees who have written in the Notes section on the
18 timecard.

19 **FIRST COUNT**

20 **RACIAL DISCRIMINATION**

21 **IN VIOLATION OF 42 U.S.C. § 1981**

22 **AGAINST DEFENDANTS FEDEX CORP AND FEDEX EXPRESS**

23 105. Plaintiff incorporates by reference the factual allegations of paragraphs 1 through
24 104 above.

25 106. Defendants, through their agents and employees engaged in a pattern and practice
26 of unlawful racial discrimination in violation of 42 U.S.C. § 1981 in connection with the terms
27 and conditions of Plaintiffs' employment.
28

107. At all relevant times, defendants had actual and constructive knowledge of the discriminatory conduct described and alleged herein, and condoned, ratified and participated in the discrimination. As a result of the hostile and offensive work environment perpetrated and maintained by defendants, and defendants' failure to protect plaintiff from further discrimination, plaintiff suffered severe emotional distress.

108. Plaintiff is informed and believes and thereon alleges that in addition to the practices enumerated above, defendants, and each of them, have engaged in other discriminatory practices against plaintiff, which are not yet fully known. At such time as said discriminatory practices become known to plaintiff, plaintiff will seek leave of court to amend this complaint in those regards.

109. As a direct and proximate result of the willful, knowing, and intentional discrimination against plaintiff, and the failure to act by defendants, plaintiff has suffered mental distress, anguish, and indignation. Plaintiff is thereby entitled to general and compensatory damages in an amount to be proven at trial.

110. Defendants' acts alleged herein are malicious, oppressive, despicable, and in conscious disregard of plaintiff's rights. As such, punitive damages are warranted against defendants in order to punish and make an example of their actions.

SECOND COUNT

RACIAL DISCRIMINATION BASED ON DISPARATE TREATMENT

**(California Fair Employment and Housing Act, Gov't Code Section 12940)
(Defendants FEDEX CORP and FEDEX)**

As and for their Second Count for Racial Discrimination based on disparate treatment against defendants FEDEX CORP and FEDEX, all plaintiffs, and each of them, allege as follows:

111. As a result of such discriminatory practices and other wrongful conduct, plaintiffs have submitted claims to the California Department of Fair Employment and Housing, requesting therein a Right To Sue letter. Plaintiffs have timely received such Right To Sue letters, thereby

1 permitting them to timely file and properly prosecute the present action.

2 112. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 111,
3 above, as though fully set forth herein.

4 113. As alleged in greater detail above, defendants FEDEX CORP and FEDEX have
5 engaged in a consistent and on-going pattern and practice of widespread racial discrimination
6 against employees belonging to such racial and ethnic minority groups as African American,
7 Mexican American, Pacific Islander and Middle Eastern. Such pattern and practice of racial
8 discrimination includes, without limitation, the following:

9 A. Caucasian employees are promoted and receive pay increases upon
10 demonstrating good management skills; whereas, minority employees
11 routinely suffer the indignity of being passed over for promotions in favor
12 of Caucasian employees with less seniority and ability;

13 B. Minority employees are provided with insufficient or less training than that
14 provided to Caucasian employees in order to limit promotion and other
15 advancement opportunities, or in order to set minority employees up for
16 failure;

17 C. Minority employees are paid less than Caucasian employees even though
18 minority have comparable responsibilities and more seniority and
19 experience;

20 D. Minority employees are assigned more onerous tasks and greater work
21 responsibilities than Caucasian employees;

22 E. Minority employees experience difficulty in obtaining additional help in
23 performing their duties; while Caucasian employees are routinely granted
24 extra help;

25 F. Minority employees are not permitted to “congregate” during breaks due to
26 a racist fear of “gangs” by defendants; whereas, Caucasian employees are
27 freely permitted to congregate;

28 G. Minority employees are subjected to formal disciplinary actions for petty

1 or trivial matters, or matters unsupported or contradicted by credible
2 evidence; whereas, Caucasian employees are not subjected to disciplinary
3 actions for engaging in similar or identical behavior;

4 H. Minority employees are limited, and at times denied, use of defendants'
5 Guaranteed Fair Treatment Process; while Caucasian employees are
6 guaranteed full rights of appeal;

7 I. Caucasian employees are permitted longer breaks than minority
8 employees;

9 J. Minority employees are reprimanded if they take short respites from work
10 to catch their breath, or extend their breaks even slightly longer than
11 allowed, whereas, Caucasian employees are not reprimanded for taking
12 respites or taking much longer breaks than allowed;

13 K. Minority employees are reluctantly granted time off for doctor's visits,
14 sickness or vacations, or pregnancy and disability leaves; whereas,
15 Caucasian employees have no difficulty getting time off;

16 L. Caucasian employees are provided with work accommodations for
17 pregnancies, temporary physical disabilities and workplace injuries, while
18 such work accommodations are denied to minority employees, even when
19 requests for accommodation are made at the direction of physicians; and

20 M. Minority employees experience unfair reduction of wages or delays in
21 payments from defendants; whereas, Caucasian, often with less seniority,
22 are paid promptly.

23 114. The California Fair Employment and Housing Act ("FEHA"), Government Code
24 section 12940, prohibits such racially discriminatory practices. Such racially discriminatory
25 practices by defendants FEDEX CORP and FEDEX represent blatant, widespread, deep-rooted
26 and unconscionable violations of FEHA.

27
28 115. As a proximate result of such violations of FEHA, plaintiffs, and each of them,

1 have suffered loss of income, loss of advancement and promotion, loss of career opportunity and
 2 loss of intangible job benefits, all in amounts to be proven at trial.

3 116. As further proximate result of the above-described widespread, deep-rooted and
 4 unconscionable racially discriminatory employment practices, plaintiffs, and each of them, have
 5 experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation,
 6 embarrassment, and related physical ailments all in amounts to be proven at trial.

7 117. Defendants FEDEX CORP and FEDEX's blatant, widespread and deep-rooted
 8 violations of FEHA and racially discriminatory acts alleged herein are oppressive, malicious,
 9 fraudulent, despicable, and in conscious disregard of plaintiffs' human and civil rights. As such,
 10 punitive damages are warranted against defendants FEDEX CORP and FEDEX in order to punish
 11 and make an example of defendants FEDEX CORP and FEDEX.

12 **THIRD COUNT**

13 **RACIAL DISCRIMINATION BASED ON DISPARATE IMPACT**

14 **(California Fair Employment and Housing Act, Gov't Code Section 12940)**
 15 **(Defendants FEDEX CORP and FEDEX)**

16 As and for their Third Count for Racial Discrimination based on disparate impact against
 17 defendants FEDEX CORP and FEDEX, all plaintiffs, and each of them, allege as follows:

18 118. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 117,
 19 above, as though fully set forth herein.

20 119. Defendants FEDEX CORP and FEDEX have a specific employment practice
 21 whereby they select certain job applicants for open positions, or determine whether certain job
 22 applicants will be eligible for full-time or part-time positions. Similarly, defendants FEDEX
 23 CORP and FEDEX have a specific employment practice whereby they select for consideration
 24 and appoint individual employees to supervisory and managerial positions. In the each of the
 25 foregoing selection processes, defendants FEDEX CORP and FEDEX apply selection criteria,
 26 which are neither disclosed nor communicated to defendant FEDEX CORP and FEDEX's
 27
 28

1 minority applicants or employees, including without limitation those applicants and employees
2 who are racially or ethnically characterized as African American, Mexican American, Pacific
3 Islander or Middle Eastern.

4 120. The application of such employment practice, criteria and discretion has a grossly
5 disparate impact on the above-reference minority groups. Through the application of such
6 practices, plaintiffs have not been hired to more lucrative and secure, full-time positions, nor have
7 they been promoted or even considered for promotion, notwithstanding the fact that certain
8 plaintiffs have superior length of service with defendants FEDEX CORP and FEDEX and greater
9 experience as employees; notwithstanding the fact that plaintiffs are qualified for promotion;
10 notwithstanding the fact that less qualified Caucasians with less experience and seniority have
11 been promoted; and notwithstanding the fact that plaintiffs have trained many of those Caucasian
12 employees that have been promoted.

13 121. As a result of the application of such racially-discriminatory employment practices
14 of selecting employees for full-time jobs or for promotion without disclosing or communicating
15 the criteria for such jobs or promotions, and in the sole discretion of defendants FEDEX CORP
16 and FEDEX, there are embarrassingly few minority employees occupying managerial positions at
17 defendants FEDEX CORP and FEDEX's facilities in the Western Region and in San Francisco
18 Bay Area.

19 122. As a result of such grossly disparate impact of such employment practice, the
20 management at the Western Region and the San Francisco Bay Area facilities are commonly
21 referred to as the "Ole Boys Network" or the "Country Club."

22 123. As a proximate result of such violations of FEHA, plaintiffs, and each of them,
23 have suffered loss of income, loss of advancement and promotion, loss of career opportunity and
24 loss of intangible job benefits, all in amounts to be proven at trial.

25 124. As further proximate result of the above-described widespread, deep-rooted and
26 unconscionable racially discriminatory employment practices, plaintiffs, and each of them, have
27 experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation,
28 embarrassment, and related physical ailments all in amounts to be proven at trial.

125. The grossly disparate impact of defendants FEDEX CORP and FEDEX's employment practices constitute blatant, widespread and deep-rooted violations of FEHA, and racially discriminatory acts alleged herein are oppressive, malicious, fraudulent, despicable and in conscious disregard of plaintiffs' human and civil rights. As such, punitive damages are warranted against defendants FEDEX CORP and FEDEX in order to punish and make an example of defendants FEDEX CORP and FEDEX.

FOURTH COUNT

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Defendants FEDEX CORP and FEDEX)

As and for their Fourth Count for Wrongful Termination In Violation Of Public Policy against defendants FEDEX CORP and FEDEX, plaintiffs RIVERA, and WHITE alone, and each of them, allege as follows:

126. Plaintiffs RIVERA and WHITE incorporate by reference the allegations of paragraphs 1 through 125, above, as though fully set forth herein.

127. Defendants FEDEX CORP and FEDEX actively engage in widespread and deep-rooted, racially discriminatory employment practices, including termination of minority employees based on their race, ethnicity and on criteria different than those imposed on Caucasian employees.

128. Concurrently, defendants have craftily devised and pursued an equally widespread and racially discriminatory practice of reprimanding and disciplining minority employees for petty and trivial matters, or for matters unsupported or contradicted by credible evidence in order to develop seemingly legitimate bases for their wrongful termination actions. And, defendants reinforce their disciplinary practices, with their unequal and unfair impact on minority employees, by limiting or preventing employees' access to defendants' Guaranteed Fairness Treatment Process to appeal such disciplinary actions.

129. With respect to plaintiff RIVERA, defendant FEDEX CORP and FEDEX issued plaintiff RIVERA a third documented disciplinary action within a 12-month period and immediately terminated his employment in August 2001. Plaintiff was written up for being late

1 to work. Prior to the written letter, plaintiff had not been disciplined for tardiness. Moreover, no
2 Caucasian Courier had been given any discipline for tardiness during the period that defendants
3 employed plaintiff, and no Caucasian had ever been terminated for tardiness.

4 130. Furthermore, each of the two previous warning letters in plaintiff RIVERA's file
5 during the 12-month period was for a trivial matter. In late 2000, plaintiff was given a written
6 disciplinary letter for leaving his printer in his truck and failing to have it inspected during the
7 week of his vacation. Defendants have never written up a Caucasian Courier for leaving their
8 equipment in their trucks under similar circumstances. Equally discriminatory, defendants gave
9 plaintiff RIVERA a written letter for driving a FEDEX truck with an expired commercial license,
10 even though the type of truck he drove did not require a commercial license. Moreover,
11 defendants have accommodated Caucasian Couriers during periods between the expiration and
12 renewal of their commercial licenses, and have not given them warning letters.

13 131. With respect to plaintiff WHITE, defendant FEDEX CORP and FEDEX issued
14 plaintiff WHITE a third documented disciplinary action within a 12-month period and
15 immediately terminated his employment. Plaintiff WHITE was issued a warning letter by
16 defendants MEEK and MOTTER ostensibly for failing to follow management directives in
17 continuing to write comments on the back of his personal time card in the section entitled
18 "Notes." Such action was taken because of plaintiff WHITE's race since Caucasian employees
19 are not issued warning letters or fired for writing comments in the section of their personal time
20 cards for notes, or for any other such trivial matters.

21 132. Furthermore, each of the two previous warning letters in plaintiff WHITE's file
22 during the 12-month period were for failure to scan freight, an action for which Caucasian
23 Handlers receive no disciplinary action. Moreover, Caucasians, who did fail to scan freight, do so
24 in more favorable circumstances, not in the harassing circumstances under which plaintiff
25 WHITE worked. Plaintiff WHITE was placed in an unnecessary, newly created position where
26 he was required to quickly take packages off the conveyor belt at a busy part of the line, scan
27 them, jump up into a truck and stack them for delivery—and to do it all alone! Two to three
28 Handlers staff similar stations along the line. No Caucasian employee has ever been forced to

1 work a can alone under the conditions suffered by plaintiff WHITE.

2 133. The public policy of the State of California prohibits discrimination and the denial
3 of employment to any person based, *inter alia*, on that person's race or ethnicity. Such public
4 policy is expressed in the California Fair Employment and Housing Act, Government Code
5 section 12900, *et seq.* and in the California Constitution, Article I, Section 8.

6 134. Defendants FEDEX CORP and FEDEX's actions in terminating plaintiffs
7 RIVERA, WHITE violated the public policy of the State of California.

8 135. As a proximate result of such violations of FEHA, plaintiffs RIVERA, WHITE,
9 and each of them, have suffered loss of income, loss of advancement and promotion, loss of
10 career opportunity and loss of intangible job benefits, all in amounts to be proven at trial.

11 136. As further proximate result of the above-described unconscionable and racially
12 discriminatory employment terminations, plaintiffs RIVERA and WHITE, and each of them,
13 have experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation,
14 embarrassment, and related physical ailments all in amounts to be proven at trial.

15 137. The racially discriminatory conduct alleged herein was and is malicious,
16 oppressive, fraudulent, despicable, and in conscious disregard of plaintiffs RIVERA and
17 WHITE's human and civil rights. As such, punitive damages are warranted against defendants
18 FEDEX CORP and FEDEX in order to punish and make an example of defendants FEDEX
19 CORP and FEDEX.

20 **FIFTH COUNT**

21 **RETALIATION**

22 **(California Fair Employment and Housing Act, Gov't Code Section 12940(f))**
23 **(All Defendants)**

24 As and for their Fifth Count for Retaliation against defendants FEDEX CORP, FEDEX,
25 CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER,
26 PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK, plaintiff
27 WHITE alone, and each of them, alleges as follows:

28 138. Plaintiff WHITE incorporate by reference the allegations of paragraphs 1 through
137, above, as though fully set forth herein.

139. Plaintiff WHITE objected to the racially-discriminatory treatment alleged herein, including without limitation the following:

A. Objections to the constant and unrelenting harassment of minority employees by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK;

B. Objections to the creation of hostile and unsafe work environments for minority employees by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK;

C. Objections to failures by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK to make reasonable accommodations for minority employees with physical disabilities and/or workplace injuries or important family obligations;

D. Objections to yelling, taunting, disrespectful behavior and infliction of emotional distress by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK;

E. Objections to failures by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK to promote minority employees to higher paying or management positions in favor of less experienced and lower

performing Caucasian employees; and

F. Objections to repeated issuances by defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK of documented counseling sessions and warning letters to minority employees for petty and trivial matters, or matters unsupported or contradicted by credible evidence.

140. In retaliation for objecting to such unlawful conduct in violation of FEHA, defendants FEDEX CORP and FEDEX, acting through their managerial personnel, defendants, FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK, retaliated against plaintiff WHITE by assigning him to less desirable, and more taxing and physically dangerous work details, by taunting them and undermining their ability to perform their responsibilities, and by repeatedly and unfairly disciplining them for trivial or imagined offenses.

141. As to plaintiff WHITE, defendants retaliated against plaintiff WHITE for claims of racial discrimination in failing to pay him for shuttle driving services, consistent with defendants' payments to Caucasian plaintiffs with similar duties. In response to plaintiff's complaint, defendants severely and unfairly lowered plaintiff's performance reviews. Defendant MOTTER further directed defendant MEEK to reduce plaintiff's 17½ weekly work schedule by 7 to 10 hours. Defendants also harassed plaintiff by repeatedly calling him into the office to complain of sorting errors in placing freight on trucks, in instances where others also placed packages in the respective trucks. The most egregious act, however, was defendants' creation of a new station at one of the busiest parts of the line, which plaintiff WHITE was required to work alone. And though the can was among the most difficult at Topside, defendants MEEK and MOTTER refused to let other Handlers voluntarily assist plaintiff; and they laughed at his repeated pleas for assistance. Plaintiff was ultimately terminated because of the impossibility of performing all of the required tasks at the "wrongful exodus can."

142. Such retaliation for objecting to unlawful racial discrimination is itself a violation of FEHA.

143. As a proximate result of such violations of FEHA, plaintiff WHITE, and each of them, have suffered loss of income, loss of advancement and promotion, loss of career opportunity and loss of intangible job benefits, all in amounts to be proven at trial.

144. As further proximate result of the above-described retaliatory conduct, plaintiff WHITE, and each of them, have experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation, embarrassment, and related physical ailments all in amounts to be proven at trial.

145. The retaliatory conduct alleged herein is and was malicious, oppressive, fraudulent, despicable, and in conscious disregard of plaintiffs WHITE's human and civil rights. As such, punitive damages are warranted against defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK in order to punish and make an example of defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK.

SIXTH COUNT

RACIAL HARASSMENT

(California Fair Employment and Housing Act, Gov't Code Section 12940)

(All Defendants)

As and for their Sixth Count for Racial Harassment against defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK, all plaintiffs, and each of them, allege as follows:

146. Plaintiffs, and each of them, incorporate by reference the allegations of paragraphs 1 through 145, above, as though fully set forth herein.

147. As alleged in greater detail above, defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER,

1 PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK have
2 harassed plaintiffs on account of their race including, without limitation, in the following
3 respects:

- 4 A. Assigning plaintiffs the most difficult, if not impossible tasks; providing
5 them with minimal, if any, support; and reprimanding plaintiffs for
6 occasionally resting from the grueling work conditions in which they were
7 forced to work;
- 8 B. Subjecting plaintiffs to widespread, deep-rooted and unconscionable
9 racially discriminatory employment practices, with the intent of inducing
10 pain, suffering, severe emotional distress, mental distress, shame,
11 humiliation, embarrassment and related physical manifestations;
- 12 C. Routinely taking disciplinary actions against plaintiffs for petty and trivial
13 matters, and for infractions unsupported or contradicted by credible
14 evidence;
- 15 D. Failing to provide plaintiffs with work accommodations for temporary
16 physical disabilities and workplace injuries;
- 17 E. Preventing plaintiffs from “congregating” during breaks or other periods of
18 recess;
- 19 F. Screaming at and taunting plaintiffs with menacing gestures like jabbing
20 fingers within inches of plaintiffs’ bodies, and uttering insults like “stupid”
21 and “lazy;”
- 22 G. Delaying paychecks and corporate gifts, shorting plaintiffs on hours
23 worked, and/or reducing their guaranteed minimum hours; and
- 24 H. Issuing plaintiffs and other minority employees poor or defective
25 equipment.

26 148. As a proximate result of such violations of FEHA, plaintiffs, and each of them,
27 have suffered loss of income, loss of advancement and promotion, loss of career opportunity and
28 loss of intangible job benefits, all in amounts to be proven at trial.

149. As further proximate result of the above-described harassing conduct, plaintiffs, and each of them, have experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation, embarrassment, and related physical ailments all in amounts to be proven at trial.

150. The harassing conduct alleged herein is and was malicious, oppressive, fraudulent, despicable, and in conscious disregard of each of the plaintiffs' human and civil rights. As such, punitive damages are warranted against defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, JOHNSON, HEINZ, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK in order to punish and make an example of defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK.

SEVENTH COUNT

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

As and for their Seventh Count for Intentional Infliction of Emotional Distress against defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK, all plaintiffs, and each of them, allege as follows:

151. Plaintiffs, and each of them, incorporate by reference the allegations of paragraphs 1 through 150, above, as though fully set forth herein.

152. The above-described actions of defendants are extreme and outrageous and were undertaken with the intent to cause plaintiffs severe emotional distress.

153. Such extreme and outrageous acts did in fact cause plaintiffs severe emotional distress.

154. As a proximate result of such extreme and outrageous acts, plaintiffs have experienced pain, suffering, severe emotional distress, mental distress, shame, humiliation, embarrassment, and related physical ailments.

155. As further proximate result of such conduct, plaintiffs have suffered loss of income, loss of advancement and promotion, loss of career opportunity and loss of intangible job benefits, all in amounts to be proven at trial.

156. Defendant's acts alleged herein are malicious, oppressive, fraudulent, despicable, and in conscious disregard of each of the plaintiffs' human and civil rights. As such, punitive damages are warranted against defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK in order to punish and make an example of defendants FEDEX CORP, FEDEX, CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK.

EIGHTH COUNT

FRAUD

(Defendants CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK)

As and for their Eighth Count against defendants CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK (collectively the "INDIVIDUAL DEFENDANTS"), all plaintiffs, and each of them, allege as follows:

157. Plaintiffs, and each of them, incorporate by reference the allegations of paragraphs 1 through 156, above, as though fully set forth herein.

158. The INDIVIDUAL DEFENDANTS held themselves out as viable, trustworthy managers who, at all times, were confident of the representations that they made to defendants. In reality, however, the INDIVIDUAL DEFENDANTS made numerous misrepresentation of material fact, including the following:

A. At various time more specifically set forth above, defendants JOHNSON, MEEK, MOTTER, SEYMOUR and WARTNICK told plaintiffs and other employed at the Sunnyvale Facility that documented counseling or OLCC

do not count towards the documented disciplinary actions that might result in termination, and that such types of discipline were not serious cause for appeal to GFT Processes;

B. At various time more specifically set forth above, defendants MATTHEWS, MOTTER, SEYMOUR, SUAZO and WARTNICK told plaintiffs and other minority employees employed at the Santa Clara Facility that documented counseling or OLCC do not count towards the documented disciplinary actions that might result in termination, and that such types of discipline were not serious cause for appeal to GFT Processes;

C. At various time more specifically set forth above, defendants FERREY, PERRY, STITES, VANGALDER, PIGORS told plaintiffs and other minority employees at the Oakland Hub that documented counseling or OLCC do not count towards the documented disciplinary actions that might result in termination, and that such types of discipline were not serious cause for appeal to GFT Processes;

D. At various time more specifically set forth above, defendants CAPRIELLO, MONTEZ, PERRY, VANGALDER, PIGORS told plaintiffs and other minority employees at the San Leandro Facility that documented counseling or OLCC do not count towards the documented disciplinary actions that might result in termination, and that such types of discipline were not serious cause for appeal to GFT Processes;

E. In 1996, when plaintiff WHITE was required to perform the additional job of Shuttle Driver, defendant MOTTER informed him that he drove too little to be eligible for additional compensation as a Shuttle Driver; and

F. In approximately March 2002, defendants instigated an investigation of plaintiff by a government representative for filing a fraudulent claim for worker's compensation disability benefits. When the investigator made

1 inquiries regarding plaintiff's injuries at plaintiff's workplace, defendant
2 MEEK fraudulently informed the agent that plaintiff was out sick and not
3 due to work-related injuries, despite having been notified by plaintiff of the
4 work-related injury and informed of the doctor's written restrictions at the
5 time of injury. Further, defendants intentionally failed to refer the
6 investigators to the other managers at the facility, with whom plaintiff had
7 spoken in notifying FEDEX of his work-related leave of absence.

8 159. All of the aforementioned representations were false. The truth was that OLCCs
9 could be used in a termination decision if combined with two other documented disciplinary
10 actions; and that they were serious enough for appeal to GFT if warranted.

11 160. Moreover, Defendants FEDEX CORP and FEDEX had paid drivers of shuttles
12 who had driven hours comparable to those driven by plaintiff WHITE increased compensation for
13 driving. Furthermore, plaintiff BUTLER had suffered a workplace injury due to defendants'
14 creation of a hostile environment and forcing plaintiff to work in a physically hazardous location.

15 161. The aforementioned representations by the INDIVIDUAL DEFENDANTS were
16 false, and the INDIVIDUAL DEFENDANTS knew them to be false when made. Moreover, the
17 INDIVIDUAL DEFENDANTS made the aforementioned representations with the intent to
18 defraud plaintiffs, and of inducing plaintiffs or third parties to rely upon said representations and
19 to act/or refrain from acting in reliance thereon.

20 162. At all times when said misrepresentations were made, plaintiffs were unaware and
21 ignorant of the falsity of the representations. Plaintiffs acted in justifiable reliance upon the truth
22 of the representations.

23 163. Defendants also engaged in fraudulent activities by altering the time cards of
24 plaintiffs and other minority employees by reducing the number of hours worked by plaintiffs.
25 The results of defendants' fraudulent alterations of plaintiffs' timecards were reductions in the
26 wages that plaintiffs had earned.

27 164. Plaintiffs were not aware of defendants' widespread, racially discriminatory
28 practice of reducing the number of hours on timecards of minority employees.

165. As a direct and proximate result of defendants aforementioned misrepresentations of material facts, plaintiffs have lost rights to appeal disciplinary actions which have influenced employment and termination decisions affecting income and career opportunities; plaintiff WHITE has lost income relating to driving responsibilities, as well as other damages; plaintiff BUTLER has lost workers' compensation benefits; and all plaintiffs have been shorted significant amounts of wages earned; all in amounts to be determined at trial.

166. Because of their willful deceit and fraudulent conduct, punitive damages are warranted against defendants the INDIVIDUAL DEFENDANTS, including CAPRIELLO, FERREY, HEINZ, JOHNSON, MATTHEWS, MEEK, MONTEZ, MOTTER, PERRY, PIGORS, SEYMOUR, STITES, SUAZO, VANGALDER and WARTNICK in order to punish and make an example of the INDIVIDUAL DEFENDANTS.

NINTH COUNT

QUANTUM MERUIT

(Defendants FEDEX CORP and FEDEX)

As and for their Ninth Count for *Quantum Meruit* against defendants FEDEX CORP and FEDEX, plaintiff WHITE, and each of them, allege as follows:

167. Plaintiff WHITE, and each of them, incorporate by reference the allegations of paragraphs 1 through 166, above, as though fully set forth herein.

168. Plaintiff WHITE has provided defendants FEDEX CORP and FEDEX with various services requested of them by their managers, and specifically performing the responsibilities of a Shuttle Driver and transporting packages and other freight to and from airports in the Bay Area and picking up deliveries from the offices of several corporate customers in the area.

169. Defendants FEDEX CORP and FEDEX have a compensation scale and practice of compensating Shuttle Drivers and drivers of shuttles for their services at a rate higher than the pay levels of Handlers and CSA Agents, positions occupied by plaintiff WHITE.

170. As drivers of shuttles, defendants FEDEX CORP and FEDEX were obligated to pay, in accordance with their compensations scale and guidelines, WHITE for his responsibilities

as Shuttle Drivers.

171. Defendants FEDEX CORP and FEDEX have failed to provide plaintiff WHITE with the additional wages and other compensation to which they are rightfully entitled for hours driving defendants' shuttles.

TENTH COUNT

VIOLATION OF CALIFORNIA EQUAL PAY ACT

**(Gov't. Code sections 12900 *et. seq.*)
(Defendants FEDEX CORP and FEDEX)**

As and for their Tenth Count for Violation of the California Equal Pay Act against defendants FEDEX CORP and FEDEX, plaintiff, and each of them, allege as follows:

172. Plaintiffs, and each of them, incorporate by reference the allegations of paragraphs 1 through 171, above, as though fully set forth herein.

173. Defendants FEDEX CORP and FEDEX have violated the California Equal Pay Act, Government Code sections 12900 *et. seq.*, which makes it unlawful for an employer to pay different wages based on the race or gender of employees who are performing "substantially similar work" in the same establishment.

174. Plaintiff WHITE is informed and believe, and based thereon allege, that defendants FEDEX CORP and FEDEX compensated plaintiff, and WHITE and other minority drivers of shuttles at the Sunnyvale Facility at levels significantly less than that of their Caucasian colleagues, despite the fact that the Caucasian Shuttle Drivers performed the same jobs as plaintiff WHITE; and that plaintiff WHITE had more seniority with FEDEX than such Caucasian Shuttle Drivers.

175. Plaintiffs are informed and believe, and based thereon allege, that defendants FEDEX CORP and FEDEX do not have an identifiable, standard seniority system that is fairly and systematically applied and observed, which might explain the discrepancies between plaintiffs' salary and the salaries of the Caucasian employees performing identical or comparable jobs in their respective facilities.

176. As a direct and proximate result of defendants FEDEX CORP and FEDEX's violation the California equal pay provisions, plaintiffs, and each of them, have suffered loss of

1 income, loss of advancement and promotion, loss of career opportunity and loss of intangible job
 2 benefits, all in amounts to be proven at trial. As further proximate result of the above-described
 3 equal pay violations, plaintiffs, and each of them, have experienced pain, suffering, severe
 4 emotional distress, mental distress, shame, humiliation, embarrassment, and related physical
 5 ailments all in amounts to be proven at trial.

6 **ELEVENTH COUNT**

7 **INJUNCTIVE RELIEF**

8 **(All Defendants)**

9 As and for their Eleventh Count for Injunctive Relief to Prevent Further FEHA Violations
 10 against all defendants, all plaintiffs, and each of them, allege as follows:

11 177. Plaintiffs have no adequate remedy at law to prevent reoccurrence of such long-
 12 standing, widespread and deep-rooted racially and/or gender-based discriminatory practices and
 13 harassment, or to prevent retaliation against plaintiffs for complaining of and objecting to such
 14 long-standing, widespread and deep-rooted racially and/or gender-based discriminatory practices
 15 and harassment.

16 178. Injunctive relief is necessary and proper to prohibit a reoccurrence of such long-
 17 standing, widespread and deep-rooted racially and/or gender-based discriminatory practices and
 18 harassment and to prohibit retaliation against plaintiffs for complaining of and objecting to such
 19 long-standing, widespread and deep-rooted racially and/or gender-based discriminatory practices
 20 and harassment.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, plaintiffs, and each of them, pray for relief as follows:

- 23 1. For general damages in amounts according to proof;
- 24 2. For special damages in amounts according to proof;
- 25 3. For punitive damages in an amount sufficient to punish and make an example out
 26 of defendants;
- 27 4. For injunctive relief to prohibit the racially-discriminatory and gender-based
 28 discriminatory practices and harassment described herein;

5. For attorneys' fees as provided by law;
6. For pre-judgment interest as provided by law;
7. For costs of suit incurred herein; and
8. For such other and further relief as the Court deems fair and just

Dated: January 9, 2004

LAW OFFICES OF WAUKEEN Q. McCOY

By: /s/ Waukeen Q. McCoy
Waukeen Q. McCoy
Co-Counsel for Plaintiffs

Dated: January 9, 2004

LAW OFFICES OF KAY M. PARKER

By: /s/ Kay McKenzie Parker
Kay McKenzie Parker
Co-Counsel for Plaintiffs